114CSR72

PROCEDURAL RULE INSURANCE COMMISSIONER

SERIES 72

PERSONAL PRIVATE PASSENGER AUTOMOBILE LIABILITY INSURANCE AND PROPERTY INSURANCE WITHDRAWAL PLAN PROCEDURES

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§114-72-1. General.

- 1.1. Scope. -- The purpose of this rule is to provide orderly and uniform procedures, as required by law and dictated by sound public policy, for any authorized insurer filing a plan of withdrawal with the insurance commissioner pursuant to section twenty, article two, chapter thirty-three of West Virginia Code. This rule establishes the general procedure to be followed by insurers that intend to withdraw from the line of automobile liability for personal private passenger automobiles covered by article six-a, chapter thirty-three of the West Virginia Code and policies of property insurance, other than inland marine policies, covered by article seventeen-a, chapter thirty-three of the West Virginia Code.
 - 1.2. Authority. -- W. Va. Code §§33-2-10 and 33-2-20.
 - 1.3. Filing Date. -- August 26, 2004.
 - 1.4. Effective Date. -- September 25, 2004.

§114-72-2. Definitions.

Definition of certain terms. The following words and terms, when used in this rule shall have the following meanings, unless the context clearly indicates otherwise:

- 2.1. "Annual statement" means the annual statement most recently filed by the insurer with the Insurance Commissioner.
 - 2.2. "Commissioner" means the West Virginia Insurance Commissioner.
- 2.3. "Withdrawal" means the termination, cancellation, or nonrenewal of the line of personal private passenger automobile liability or physical damage insurance subject to article six-a, chapter thirty-three of the West Virginia Code; or the termination, cancellation, or nonrenewal of the line of property insurance, other than policies of inland marine insurance, subject to article seventeen-a, chapter thirty-three of the West Virginia Code; or the transfer from one affiliated insurer within a holding company system to another insurer within that same holding company system of the line of personal private passenger automobile liability or

physical damage insurance or property insurance; or the cessation of business entirely in this state.

2.4. "Withdrawal plan" means a written document which contains the required elements listed in section 4 of this rule and is filed with the commissioner for purposes of withdrawal from the line of personal private passenger automobile liability or physical damage insurance subject to article six-a, chapter thirty-three of the West Virginia Code; or for withdrawal from the line of policies of property insurance, other than policies of inland marine insurance, subject to article seventeen-a, chapter thirty-three of the West Virginia Code; or for withdrawal from doing business in this state.

§114-72-3. When a Withdrawal Plan is Required.

- 3.1. Any licensed insurer must file with the commissioner a withdrawal plan before the insurer undertakes a withdrawal.
- 3.2. An insurer undertakes a withdrawal when it takes any action on its own initiative that will result in the insurer's ceasing to write the line of personal private passenger automobile liability or physical damage insurance subject to article six-a, chapter thirty-three of the West Virginia Code; or ceasing to write the line of policies of property insurance, other than policies of inland marine insurance, subject to article seventeen-a, chapter thirty-three of the West Virginia Code; or ceasing to operate in the state.
- 3.3. An insurer will not be considered to have acted on its own initiative in effecting a withdrawal when it acts pursuant to a disciplinary or administrative directive or order of the commissioner or insurance department of another state, when it acts pursuant to a court order, or when the insurer acts pursuant to a directive of a supervisor, conservator, or receiver. If any out-of-state directive or order is not provided to the commissioner within thirty (30) days of the issuance of any such directive or order, the insurer will be considered to have acted on its own initiative.
- 3.4. Nothing in this rule authorizes or allows an insurer to withdraw from any coverage if such withdrawal would violate any federal or state law or any provisions contained in a contract or evidence of coverage or a policy or certificate of insurance itself. This rule does not modify or supercede any requirement under chapter thirty-three of the West Virginia Code or any other state or federal law to notify policyholders that an insurer will not renew any coverage. If a withdrawal plan is required by this section because an insurer is ceasing to write the line of personal private passenger automobile liability or physical damage insurance in this state, before any such notice is given a withdrawal plan must be filed with and approved by the commissioner pursuant to section 5 of this rule. If the insurer's withdrawal relates to the line of property insurance, other than policies of inland marine insurance, then the commissioner's approval of the withdrawal plan is not required prior to the insurer issuing notice of nonrenewal or cancellation: Provided, that the withdrawal plan must be filed with the commissioner at least forty-five (45) days before the insurer initiates any kind of withdrawal activity.

§114-72-4. Contents of a Withdrawal Plan.

- 4.1. An insurers' withdrawal plan must contain the following:
 - a. Identification of the line or lines of insurance being withdrawn;
- b. Identification of the policy forms by number and type affected by the withdrawal;
 - c. The dates the insurer intends to begin and complete its withdrawal;
 - d. An explanation of the reasons for the withdrawal;
- e. Provisions for notifying all of the affected policyholders and certificateholders of the dates of the beginning and completion of the withdrawal and how the withdrawal will affect them, including, but not limited to:
- 1. A copy of the notice and an explanation of the manner in which the notice will be provided to policyholders and certificateholders; and
- 2. Either affirmation that such notice will be provided within thirty (30) days of the approval of the withdrawal plan if approval is required, or a request that the commissioner allow the notice to be provided at some other specified date or time;
- f. Provisions for meeting all of the insurer's contractual obligations, including, but not limited to:
- 1. Notification of all affected agents of the insurer of the date the insurer intends to begin and complete the withdrawal; and
- 2. If applicable, a statement affirming the insurer's compliance with the provisions of article six-a, chapter thirty-three of the West Virginia Code relating to cancellation and nonrenewal of automobile liability or physical damage insurance coverage;
- g. Provisions for providing the same level of services to the insurer's West Virginia policyholders and claimants as set forth in the insurer's contracts;
 - h. Information on the insurer's West Virginia business, including:
- 1. The total annual premium volume and the number of policies and certificates and covered persons in West Virginia for each line of business to be withdrawn;
- 2. An estimate of what percentage of the West Virginia market the withdrawal constitutes; and

- 3. Any information necessary to assist the commissioner in determining whether a market availability problem will be created by the withdrawal, the extent of the problem, and what market assistance may be needed to alleviate the problem, including, but not limited to, the following:
- A. Type of location and geographic area subject to the withdrawal (identify type of area such as suburban, urban, rural, or list specific rating territories) and zip codes; and
- B. If applicable, types of risks no longer being covered, for example, if insurer is no longer writing private passenger auto insurance coverage for single-car families or for persons without supporting business;
- i. If an insurer is unable to provide the exact number of policies and certificates and covered persons, the insurer must provide estimates of these numbers and explain how the estimates were determined;
- j. The number of and estimated amount of all losses outstanding in West Virginia, including claims incurred but not reported;
- k. A plan to handle the losses specified in subdivision j of this subsection, including, but not limited to:
- 1. Identification of what assets will be available for paying outstanding incurred but not reported claims, claims in the course of settlement, and associated loss adjustment expenses;
- 2. Identification of who specifically will administer the run-off of the business; and
- 3. An actuarial opinion certifying that adequate reserves are available to pay outstanding claims;
- *l.* If West Virginia policyholders or certificateholders are to be reinsured, then the filing of a reinsurance agreement meeting all statutory and regulatory requirements and, when applicable, the filing of an assumption certificate;
- m. Provisions for meeting any applicable statutory obligations, including, but not limited to:
 - 1. Payment of any guaranty fund assessments;
- 2. Participation in any assigned risk plan, pool, fund, facility, or joint underwriting arrangement; and
 - 3. Payment of any taxes;

- n. A list of any other programs or products the insurer will continue to offer in West Virginia; and
- o. An affirmation that no new business in the same line as that from which the insurer has withdrawn will be solicited by the insurer in this state during or within the three years subsequent to the filing of the withdrawal plan unless the commissioner waives this requirement.
- 4.2. The filing of a single consolidated withdrawal plan for all withdrawing insurance companies in the same holding company system does not meet the requirements of this section. A separate withdrawal plan must be filed for each insurance company intending to withdraw.
 - 4.3. The withdrawal plan must be signed by at least one officer of the insurer.

§114-72-5. Withdrawal Plan Submission and Approval Procedures.

- 5.1. An insurer must submit its withdrawal plan to the commissioner at least forty-five (45) days prior to the date the insurer anticipates initiating any type of withdrawal activity.
- 5.2. If the withdrawal plan relates to personal private passenger automobile policies, the withdrawal plan shall be deemed approved if the commissioner has not held a hearing within forty-five (45) days after a complete withdrawal plan is filed, or if approval has not been denied within forty-five (45) days after the hearing. If the withdrawal plan relates to policies of property insurance, other than policies of inland marine insurance, the commissioner's approval of the plan is not required in order for the insurer to effect its withdrawal, however the plan must be on file with the commissioner for at least forty-five (45) days before the insurer may initiate withdrawal activities.
- 5.3. No plan shall be considered "filed" until such date as the withdrawing insurer has provided to the commissioner all information and material necessary to constitute a complete withdrawal plan, as required under this rule.
- 5.4. A withdrawal plan relating to personal private passenger automobile liability or physical damage insurance will not be approved unless the insurer establishes to the satisfaction of the commissioner that allowing it to withdraw would be in the best interest of the insurer, its policyholders and the citizens of this state. To assist in making this determination, the commissioner may consider any or all of the following:
- a. Whether the insurer has an agreement with an affiliated or nonaffiliated insurer to transition the affected policies or certificates, the terms and conditions of which provide the policyholders with the same rights that existed under the withdrawing insurer's policies or certificates;
 - b. The insurer's financial condition;
 - c. The insurer's A.M. Best rating;

- d. Any disciplinary, regulatory, or administrative action taken by another state;
- e. The timing of the withdrawal;
- f. The effect the withdrawal will have on the insurer's other products, programs, or lines of business in this state;
 - g. The effect the withdrawal will have on the insurance market in this state; and
 - h. Any other criteria considered relevant by the commissioner.

§114-72-6. Filing of Annual Financial Statement and Other Required Data and Information.

Any insurer filing a withdrawal plan shall continue to file all annual financial statement data, other required statistical and data filings, other required reporting, and any other information requested by the commissioner applicable to any withdrawn line until all policyholder obligations for the line in this state are fulfilled. This section does not exempt an insurer from any filings or information requests required by the commissioner.

§114-72-7. Requirements to Resume Writing Insurance.

Any insurer withdrawing from writing any line of insurance in this state and required to file a withdrawal plan pursuant to this rule may not resume writing the withdrawn line in this state without complying with all applicable statutory and regulatory provisions governing authorization to write such line of insurance in this state.